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Impact of Municipal Ordinances on Shale Gas Development in Pennsylvania

Section 601.602 of the Pennsylvania Oil and Gas Act provides the following: "Except with respect to ordinances adopted pursuant to the act of July 31, 1968 (P.L. 805, No.247), known as the Pennsylvania Municipalities Planning Code, and the act of October 4, 1978 (P.L. 851, No. 166), known as the Flood Plain Management Act, all local ordinances and enactments purporting to regulate oil and gas well operations regulated by this act are hereby superseded. No ordinances or enactments adopted pursuant to the

aforementioned acts shall contain provisions which impose conditions, requirements or limitations on the same features of oil and gas well operations regulated by this act or that

accomplish the same purposes

as set forth in this act. The Commonwealth, by this enactment, hereby preempts and supersedes the regulation of oil and gas wells as herein defined."

Section 603 (b) of the Municipalities Planning Code recognizes the preemption and supersedence by the Oil and Gas Act and requires land use controls to be consistent with and not exceed the provisions of the Act. Furthermore Section 603 (i) of the Code requires zoning ordinances to provide for reasonable development of minerals (which includes oil and natural gas) in each municipality.

In addition, numerous court cases have defined the limits of zoning powers in the

Commonwealth. Most recently, in 2009 the Pennsylvania Supreme Court issued two decisions that address the extent to which the Pennsylvania Oil and Gas Act preempts or supersedes local municipal regulation of gas well drilling activity. In *Range Resources v. Salem Township*, the court upheld the invalidation of a township ordinance that extensively regulated gas well drilling operations on the basis that the township was attempting to enact its own comprehensive regulatory scheme for oil

and gas development within the municipality. The court made it clear that a municipality cannot adopt requirements parallel to those in the Oil and Gas Act nor can it single out the natural gas industry for regulatory treatment

differing from that for commercial or industrial development. In *Huntley & Huntley v. Borough Council of the Borough of Oakmont*, the court ruled that a municipality as a part of its traditional zoning power can designate zoning districts where oil and gas development can be permitted or prohibited. However, the court stressed that the power to do so is limited.

A number of municipalities have adopted ordinances (mainly zoning ordinances) over the past two years that target and limit the operations of the natural gas industry. A great many of these ordinances overstep the authority granted to municipalities



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under the Oil and Gas Act and the Municipalities Code and further defined by the decisions noted above. The multitude of ordinances is like a patchwork of requirements across the Marcellus play. The net effect of these ordinances, many of which are illegal, chill the development of natural gas from the Marcellus, and thereby deprive royalty owners of the ability to develop natural gas from their own property.

Examples of provisions of ordinances that overstep municipal authority include:

- Exclusionary zoning – completely banning natural gas development or imposing numerous limitations on development that result in a de facto ban.
- Setbacks – requiring minimum setbacks from certain buildings and features that exceed those required under the Oil and Gas Act.
- Noise – establishing arbitrary and unreasonable noise restrictions, some of which are limited solely to the natural gas industry and not applied to others.
- Well features/ environmental restrictions – establishing requirements for well operations and designs and environmental considerations that parallel or exceed those already required by the Oil and Gas Act and other environmental statutes.
- Excessive fees – establishing fees that are not reasonably related to the cost of the municipality's operations regarding natural gas development.
- Mid-Stream restrictions – excluding or severely limiting gathering lines, compressors and processing facilities that are essential to natural gas development.
- Road restrictions – singling out the industry and not applying the same restrictions to other heavy-haulers and, in some instances, to all municipal roads – even those that can reasonably accommodate heavy loads.
- Constitutional problems – stripping corporations of their status as persons under the Pennsylvania and U.S. Constitutions and their rights under the Commerce and Contracts clauses.
- Other limits

The 2011 report of the Governor's Marcellus Shale Advisory Commission recognized the negative effect of these municipal ordinances on the development of shale gas by including recommendation 9.39 the following: "The imposition of any [impact] fee should be accompanied by appropriate statutory changes to ensure fair and consistent municipal regulation which does not unreasonably impede the development of natural gas..."

Recommendation

NARO –PA should work with its members to communicate with both state and local elected officials, opposition to local ordinances that overstep municipal authority under Pennsylvania law, can chill the development of natural gas resources, and generally advocate to these officials support for the enactment of legislation that further clarifies and limits the power of municipalities to regulate natural gas development and provides for greater consistency across the Commonwealth. NARO-PA supports the responsible development of natural gas from the Marcellus Shale and opposes efforts by municipalities to deny royalty owners the ability to develop resources that they rightfully own. ●

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Alert to NARO-PA Members

In blatant disregard for the property rights of landowners, numerous municipalities across the Marcellus play in Pennsylvania have enacted ordinances that clearly overstep their authority under state law. Together, these ordinances create a patchwork of unreasonable requirements that threaten development of natural gas from the Marcellus and deprive royalty owners of the right to develop natural gas.

Act now and stand up for your property rights! [Contact](#) your members of the Pennsylvania General Assembly and urge them to oppose these ordinances that deny your property rights and instead support common sense legislation that reaffirms your rights as a landowner. By passing legislation that clarifies, limits and makes uniform the role of municipalities in the development of natural gas, Pennsylvania lawmakers will send an unmistakable sign in support of royalty owners and their property rights. Municipalities should not establish arbitrary rules and requirements that overstep their authority and are intended to hinder, if not stop, the development of our natural gas resources.

Go [here](#) to find your lawmakers.

HOW TO USE SAMPLE LETTER

On page 4 and 5 is a copy of a letter Chapter President Jacqueline Root drafted and has been sending to Pennsylvania's elected officials.

We decided to make it easy for you to do the same by reprinting the letter here. Passing this information along can be done in 3 easy steps:

1. Print pages 4 & 5 of this newsletter;
2. Print your name, address, e-mail address, and telephone number on the top of the document. Fill in the name of the elected official to whom you are sending it to. Sign your name at the bottom;
3. Use the search form link provided above to find all of the information needed to reach the people who can make a difference in protecting our rights as royalty owners and start mailing!

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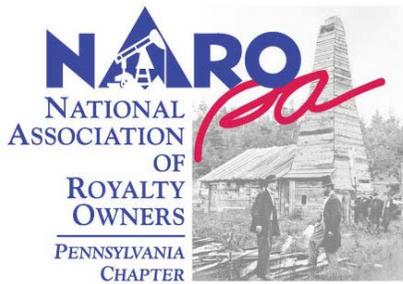
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To:

Re: Protecting Royalty Owner Rights from Local Zoning Ordinances

Dear

Local zoning ordinances are of particular concern to me as a mineral owner in Pennsylvania who has chosen to develop my mineral estate. I am using this letter explaining my position, as well as the position of the National Association of Royalty Owners, Pennsylvania Chapter, as a way to inform my local elected officials how regulation of gas drilling is undermining the rights of mineral owners, like myself, across the Commonwealth.

The National Association of Royalty Owners (NARO) is the only nationwide organization focused exclusively on encouraging and promoting the exploration and production of minerals while preserving, protecting, advancing, and representing the interests and rights of mineral and royalty owners. Pennsylvania is home to one of six state chapters of NARO, and with the General Assembly and the Administration crafting policy that could impact the development of the Marcellus Shale formation, I write to you on behalf of our members and all citizens who own natural gas-producing property in the Commonwealth.

Pennsylvania's Oil and Gas Act makes clear that, with few exceptions, it supersedes all local ordinances seeking to regulate the development of oil and gas. With this in mind, we are alarmed by the increasing patchwork of municipal ordinances throughout the state seeking to place limitations on Marcellus development in some way, be it through exclusionary zoning, setback, or other limitations. Some of these limitations exceed requirements in the Oil and Gas Act, while others single out the natural gas industry for disparate treatment relative to other enterprises. Examples include prohibiting drilling in all or a portion of a municipality, unreasonable noise requirements, not allowing other ancillary operations necessary for oil and gas development, and more.

As an organization dedicated to preserving private property rights, we are concerned that these ordinances are restricting the ability of our members and all landowners in the Marcellus Shale region to develop their land and realize the expectations contained in their lease agreements.

Our objections to this are three-fold:

Above all, the approach undermines property rights of Pennsylvania landowners. Simply put, an alarming and increasing number of local governments are depriving royalty owners of the opportunity to develop their natural gas resources. The property rights of royalty owners must be respected in Pennsylvania. Local governments cannot and should not impose regulation on the oil and gas industry that chills development and the economic opportunity for residents of a given municipality. Pennsylvania needs greater consistency among municipalities, which requires the enactment of statewide environmental and safety standards as outlined in the Governor's Marcellus Shale Advisory Commission report, but also includes specific limitations on the ability of a municipality to deny the private property rights of its citizens.

The approach indirectly promotes natural gas development in neighboring states. Natural gas companies have limited capital and face ongoing fiscal decisions regarding the location of their drilling rigs. In fact, in light of currently low gas prices and higher relative costs of production, Pennsylvania has already seen a great deal of capital shift to Ohio, where profit margins are significantly higher. Should Pennsylvania maintain the status quo with policies that reaffirm the inconsistent and, in many ways, unworkable patchwork of municipal ordinances, drillers will continue to seek to move an increasing amount of their operations allocating more drilling dollars to states that provide greater certainty and uniformity with regard to regulation.

The approach is riddled with legal problems. Oil and gas-related ordinances developed at the municipal level would restrict development in the Marcellus, which could have far-reaching economic impacts in communities that have experienced significant benefits of natural gas production. Furthermore, many of these ordinances likely would result in time-consuming and costly legal challenges.

Our organization applauds and commends to your attention recommendation 9.39 made by the July 2011 report of the Governor's Marcellus Shale Advisory Commission, which recognized the negative effect of inconsistent municipal ordinances on the development of shale gas, noting: "The imposition of any [impact] fee should be accompanied by appropriate statutory changes to ensure fair and consistent municipal regulation which does not unreasonably impede the development of natural gas..."

By passing legislation that clarifies, limits, and makes uniform the role of municipalities in the development of natural gas, Pennsylvania lawmakers will send an unmistakable sign of support to royalty owners and their property rights. We welcome further discussion on this important matter and hope to have the opportunity to meet with you in person on behalf of our diverse and committed membership.

Sincerely,

Non-Production During Secondary Term Results in Termination of Lease

By Robert J. Burnett, Esquire; Houston Harbaugh, Attorneys at Law

In a recent decision, the Washington County Court of Common Pleas granted a landowner's request to terminate a ninety-one year old oil/gas lease due to non-production. In Wilson v. Equitable Gas Company, (No. 2009-6503 Washington County, August 31, 2011), the trial court held that a five-year gap in production was sufficient to automatically terminate the lease. As explained below, this decision could impact hundreds of non-producing leases across the Commonwealth.

The facts of the Wilson case are very common to many landowners in Pennsylvania. The Wilson family purchased a 197 acre farm in Amwell Township, Washington County in the late 1980's. The farm was subject to an old gas lease originally signed back in 1920 ("1920 Lease"). At the time the Wilsons bought the farm, there was a single, shallow well on the property that produced modest royalties. No gas, however, was produced between 2001 and 2006. Production was restored in 2006. In 2009, the Wilsons brought suit seeking cancellation of the 1920 Lease due to the complete cessation of production between 2001 and 2006. Interestingly, the well was producing gas at the time the suit was filed.

The 1920 Lease contained a typical habendum clause with a ten (10) year primary term. Following expiration of the ten (10) year primary term, the 1920 Lease would remain in effect "as long thereafter as oil or gas, or either of them, is produced from said land by the said party of the second part..." The Wilsons contended that the moment production ceased in 2001, the 1920 Lease automatically converted to a "tenancy at will" which they could terminate at any time. The trial court

agreed and opined that:

"[T]he first question the court must decide is whether there has been a time, after the primary term of ten years, when gas production ceased, and the answer is uncontroversially yes. No gas was produced from this well from 2001 through July 31, 2006. the Lease continues as long as gas is produced. The Court finds that when gas is not produced, the Lease converts to a tenancy at will automatically..."

(See, Wilson v. Equitable Gas Co., p. 4). The Court further observed that a "tenancy at will" can be terminated at any time by the landowner and that the Wilsons were

well within their rights to now terminate the 1920 Lease. As such, the Court granted the Wilsons' Motion for Summary Judgment and declared that the 1920 Lease was "terminated and no longer valid."

Pennsylvania has long frowned upon the practice of holding acreage with a non-producing lease. See, McKnight v. Manufacturers Natural Gas, Co., 23 A. 164, 166 (Pa. 1892) ("The defendant cannot hold the premises and refuse to operate them"); Brown v. Haight, 255 A.2d 508, 511 (Pa. 1969) ("...in 1947 when oil and gas were not produced in paying quantities, the grantee's fee interest terminated automatically..."); Jacobs v. CNG Transmission Corp., 772 A.2d 445 (Pa. 2001) ("...the lessee has an affirmative obligation to enter to develop and to produce the oil and gas or terminate the landowner's contractual obligations..."); Hite v. Falcon Partners, 2011 WL 9632 (January 4, 2011) ("...when that primary term ended and Falcon failed to commence production, the agreements expired"). In Wilson, the trial court reaffirmed this long-standing policy. Absent an appropriate savings clause in the lease itself, periods of non-production during the secondary term will likely automatically terminate the lease. Landowners and gas producers alike must carefully review their respective leases when confronted with any cessation of production during the secondary term. As the Wilson decision illuminates, simply restoring production may not be enough to save a previously non-producing lease. ●

Mr. Burnett is the Chair of the Oil/Gas Practice Group at Houston Harbaugh, P.C. He can be reached at rburnett@hh-law.com or (412) 288-2221.



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EID-Marcellus Highlights Advancements in Susquehanna County

By John Krohn, EID

As most know, events in 2009 halted natural gas production in a nine square mile area near Dimock, PA in Susquehanna County. Methane migration issues affecting less than 20 residents prompted the Pennsylvania Department of Environmental Protection (DEP) to institute a temporary moratorium. Now, nearly three years have passed and natural gas production may once again be on the doorstep in the affected area.

After receiving a request from Cabot Oil and Gas (Cabot), the producer in the area, DEP on October 18th declared that Cabot had fulfilled all terms outlined in its consent decree and could cease delivering water to affected residents beginning November 30th. Following this announcement, Cabot informed affected households and re-iterated that they would still install methane treatment systems for an additional sixty days if one had not yet been requested. All of the affected homeowners who accepted methane treatment systems have seen a 96%-98% reduction in methane concentrations in their wells. Since the initial incident, Cabot has consistently encountered a small minority of uncooperative homeowners, all of whom are now engaged in litigation against the company, and this group was infuriated by the decision. However, testing of the litigants' wells conducted by Cabot, when they have been able to gain access to these homes, has demonstrated their wells meet Federal Safe Drinking Water standards.

As a result of the announcement, Dimock found itself thrust into headlines yet again. This time however the rhetoric that developed was so baseless it prompted DEP Secretary Michael Krancer to write the Chambersburg Public Opinion to correct their story "DEP decision on Dimock water was premature". In his letter, Krancer stated the piece "ignores the reality that our [DEP] decision was governed by the facts and the law." Krancer would go on to state, "The real issue here is not safety; it's about a very vocal minority of Dimock residents who continue to demand that taxpayers should foot the bill for a nearly \$12 million public water line along Route 29 to serve about a dozen homes."

In addition, earlier this year local leased landowner Esther Rayias organized a letter writing campaign to compel Secretary Krancer to remove the moratorium and allow natural gas production to continue. Initially, Esther didn't receive a response. However, in September she went to Williamsport, PA to hear T. Boone Pickens speak and she found herself face-to-face with Secretary Krancer during a roundtable discussion there. When Esther asked Secretary Krancer about her letter he committed to meeting with her and other affected residents in the near future to discuss the issue further.

Esther, and her neighbors, continue to wait for DEP's decision. Meanwhile, the rest of the community continues to reap the benefits of natural gas development. In just the past few weeks, more evidence of this truth has arisen, including the announcement of Gas Search Drilling Services investing \$2 million for the development of a new office building. The company, which came to the area only a few years ago, already employs ninety local workers. Due to these events, and others, it appears DEP could come to a conclusion on the fate of the affected area in the not too distant future. ●

To follow EID-Marcellus and the debate over natural gas production in Pennsylvania and New York please visit their blog on www.eidmarcellus.org and like their Facebook page at <http://www.facebook.com/angaus#!/eidmarcellus>

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State Senate Approves Legislation to Provide Drilling Impact Fees

Press Release

HARRISBURG -- The state Senate today approved legislation that would establish reasonable fees on gas drillers, establish strong environmental safeguards, and strengthen oversight of the Marcellus Shale drilling industry, according to Senator Joe Scarnati, R-Jefferson, who sponsored the measure.

Passage of [Senate Bill 1100](#) comes after months of negotiation and compromise on a number of areas, including how funding would be allocated and local zoning issues.

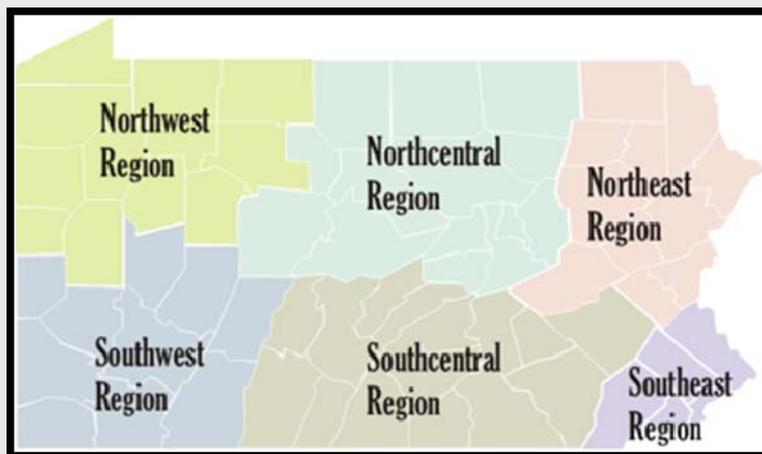
"This legislation will help communities impacted by drilling, provide for reasonable local zoning parameters and implement strong environmental protections," Scarnati said. "Through a reasonable and well-thought-out impact fee on shale companies, we can manage this tremendous resource in a way that improves our economy, creates new jobs and opportunities for our residents and protects our quality of life."

- [SB1100 Distribution Estimates](#)
- [SB1100 Fee Estimates](#)
- [SB1100 Final Fee](#)

Scarnati said his proposal would impose a tax rate of approximately a 3 percent on gas production – retroactive to 2010 -- that is expected to generate tens of millions of dollars a year to help maintain roads and sewer systems in communities affected by the drilling. It would also fund statewide initiatives that finance infrastructure improvement, environmental cleanups and open space.

Scarnati's bill would impose a sliding fee of \$50,000 per well in the first year of production, with a \$10,000 reduction each subsequent year. Starting in the 11th year until the 20th year of the well, an annual fee of \$10,000 is imposed.

Continued to page 10



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According to estimates, the fee proposal would raise \$94 million from wells that were producing gas this year, a figure that would rise to \$155 million next year and \$255 million by 2014. Over the next five years the fee will yield more than \$1 billion dollars.

Approximately 55 percent of the fees generated would go to counties and municipalities in the Marcellus Shale region and 45 percent to statewide infrastructure projects, environmental programs and other projects related to natural gas production.

Other funds also would be set aside for county conservation districts, firefighter training programs, the Fish and Boat Commission and for boosting availability of affordable housing.

The legislation also provide for standardized but flexible zoning standards which would allow communities to retain reasonable control over zoning power -- a "solid and important compromise" that Scarnati said has drawn support from local government groups because it provides for local authority while creating reasonable baselines.

Scarnati said the increased environmental safeguards include increased setbacks, a listing of all chemicals used at a drill site, provisions for water safety, an

increase in well bonding, and increased penalties for environmental violations.

"The Marcellus Shale industry is here to stay in Pennsylvania – bringing us jobs, huge economic benefits and the potential for energy independence," Scarnati said. "It makes sense to impose a reasonable impact fee on the industry to provide the funding necessary to further protect our natural resources, particularly at a time when our state is being forced to stretch our tax dollars."

He pointed to the huge influx of jobs in the past several years and the continued need for workers with a variety of skills to propel the growing industry.

Researchers with the Marcellus Shale Education and Training Center estimate shale drilling will require between 3,700 and 15,000 direct jobs in central and northern Pennsylvania by 2013 and an additional 8,100 to 13,500 direct jobs in southwestern Pennsylvania by 2014.

In addition, the state Department of Revenue estimates that natural gas drilling companies have paid more than \$1.1 billion in taxes since 2006, including corporate taxes, sales taxes and employee withholding.●

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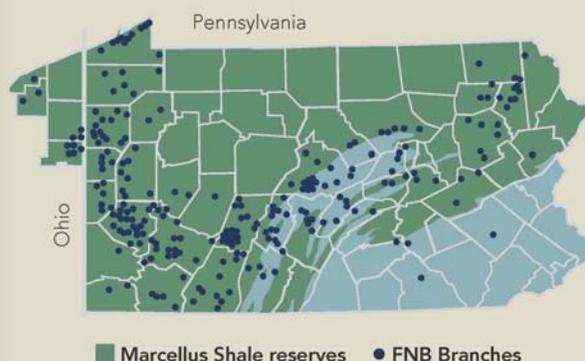
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"FNB is well-positioned to serve the needs associated with Marcellus Shale based on loan portfolio concentration and alignment of branches with rigs and permitted wells."

-RCB Capital Markets, December 2010



Digging deeper into SB 1100's Effect on Municipal Zoning

By: T. Walczak

As originally proposed, SB 1100 contained what was called the "model municipal ordinance" which sought to standardize municipalities ordinances statewide in an effort to optimize the development of the states oil and gas reserves. Companies which often operate statewide are forced to deal with a patchwork of regulations across their leasehold, imposed by the individual townships they worked in. Early in the Marcellus development, the industry maintained they were exempt from municipal regulation under the Oil & gas Act of 1984. This prompted substantial pushback from local planners statewide since they felt it removed the ability of local government to control activities within its boundaries.

The model municipal ordinance sought to make drilling of a well or operation of a compressor station or gas processing plant acceptable land uses in all zoning districts, except residential, where it could be a conditional use. Restrictions on fencing, lighting, and noise could be drafted, but not imposed singularly on the gas industry. If these restrictions were to be drafted, they would need to be applied to all activities taking place in the township. Also, it mandated that no ordinance could be drafted restricting the hours of operations.

In committee, SB 1100 was stripped of this section (Chapter 33), but replaced it with "local ordinances relating to oil and gas operations," also referred to as Chapter 33. The purpose of this change was to "allow municipalities to efficiently regulate oil and gas operations consistent with their authority under the Act of July 31, 1968, known as the Pennsylvania Municipalities Planning Code (MPC)." It also seeks to "foster the expeditious and efficient handling of municipal oil and gas procedures" as well as clarify the role of federal, state and municipal governments as they relate to oil and gas development.

Most notably, SB 1100, as it was originally drafted states: *Nothing in this chapter shall impair or infringe upon the preemption or supersedure of the regulation of gas wells under section 602 of the act of December 19, 1984, known as the Oil & Gas Act.*" SB 1100, as it now reads repeals and replaces the Oil & Gas Act of December 19, 1984.

This nuance can be interpreted as our legislator's determination that the oil and gas industry should fall under local regulation and not be exempt from local zoning, as the industry had hoped.

Much of the language does re-emerge restricting a

township's ability to single out the oil and gas industry for restrictions not imposed on other operations taking place in the communities' borders and its allowance for development in all zoning districts.

However, it does include a few major additions to the legislation: the backbone of all good government, some checks and balances.

First, applications for review by a municipality not taking more than 30 days for a permitted use and no more than 120 days for condition use applications, obviously to prevent a rogue township from manipulating the art of regulatory delay to thwart operations.

Secondly, it provides some accountability. Operators of a proposed well, or potential royalty owners from that well, may request the state's Attorney General review a municipalities zoning regulations to "determine if it allows for reasonable development of oil and gas resources in accordance with the provisions specifically addressed in this chapter, the MPC and judicial decisions of the Commonwealth." Municipalities may also conduct a "pre-enactment review" to determine if rules they are planning to enact also do the same. These requests also must be answered in 120 days or less.

Thirdly, it enumerates penalties through civil action. This allows for the state's Attorney General or any person who is aggrieved by enactment of a regulation to bring action against a local municipality, in Commonwealth court, to invalidate or enjoin enforcement of a regulation that does not allow for the reasonable development of the resource. In the event of private action by a royalty owner, the aggrieved may seek reimbursement from the municipality for attorney fees and similar costs. Conversely, if the court finds the action frivolous, the Plaintiff is responsible to reimburse the municipality for their legal costs.

So what type regulations allow for reasonable development under SB 1100?

Well, Chapter 33 also begins to get us there as well. In order for a municipality to be considered to be complying with "reasonable development," it must:

1. Allow well and pipeline location assessment activities, including seismic;
2. Impose conditions, requirements or limitations on oil and gas operations that are no more stringent than similar conditions, requirements or limitations imposed on construction

continued to page 12

- activities for other land development within the zoning district where the oil and gas operations are situated;
3. Impose conditions, requirements or limitations on the height of permanent structures, setbacks from property lines, screening and fencing, lighting and noise relating to oil and gas operations that are no more stringent than similar conditions, requirements or limitations imposed on similar conditions, requirements or limitations imposed on industrial uses or what is allowed within the particular zoning district;
 4. Have a review period for permitted uses that does not exceed 30 days for complete submissions or that exceeds 120 days for conditional uses;
 5. Authorize oil and gas operations, other than activities in or at impoundment areas, compressor stations and processing plants, as a permitted use in all zoning districts;
 - However, oil and gas activities may be considered conditional uses in residential zones and may even be restricted if the wellhead cannot be placed at least 500 feet from an existing building. In a residential zone, all of the following apply:
 1. A well site may not be located so that the outside edge of the pad is within 300 feet of an existing building;
 2. Oil and gas operations, other than the placement, use and repair of oil, gas, and water pipelines, access roads, security structures, and fencing may not take place within 300 feet of an existing building;
 6. Authorize impoundment areas used for oil and gas operations as a permitted use in all zoning districts, provided that the edge of any impoundment area shall not be located closer than 300 feet from an existing building.
 7. Authorize natural gas compressor stations as a permitted use in agriculture and industrial zoning districts and as a conditional use in all other zoning districts, if the natural gas compressor building meets the following conditions:
 - is located 750 feet or more from the nearest existing building or 200 feet from the nearest lot line, whichever is greater, unless waived by the owner of the building or adjoining lot; and
 - does not exceed a noise standard of 60dbA at the nearest property line or the applicable standard imposed by Federal law, whichever is lesser.
 8. Authorize natural gas processing plants as a permitted use in an industrial zoning district and as conditional uses in agricultural zoning districts, if the natural gas processing plant buildings meet the following conditions:
 - Unless there is a waiver by the owner of the building or adjoining lot, the natural gas processing plant building is located at the greater of: (A) at least 750 feet from the nearest existing building; or (B) at least 200 feet from the nearest lot line.
 - The noise level of the natural gas processing plant at the property line does not exceed the lesser of: (A) a noise standard of 60dbA; or (B) the applicable standard imposed by Federal law.
 9. Impose restrictions on vehicular access routes for overweight vehicles only as authorized under 75 Pa.C.S. (relating to vehicles) or the MPC.
 10. Does not attempt to impose limits or conditions on subterranean operations or hours of operation.

For a municipality to be eligible to receive funds from the impact fee, it must adopt Chapter 33 into its zoning.

Conclusion:

Essentially, the major change SB 1100 ushers in, if this is the final draft approved by the House and Senate, and signed by the governor, is the clarification which does give municipalities the ability to regulate development activities within its borders. However, this essential enumeration of allowances for “reasonable development” is a compromise the industry and royalty owners can accept, at a minimum, to protect our rights as mineral owners. It gives a municipality the illusion of control but, to an extent, ties the hands of municipal meddling. In cases statewide, activist municipalities have been mounting an assault on private property owners’ rights. This legislation will limit our exposure. Standby for the civil actions to be filed, if the Governor signs this into law, and the battle to return to the courts... You can count on the legal experts of NARO-PA to keep us informed on all the action. ●

"Local Control" vs. "Private Property Rights": Be Careful What You Wish For

Curt Coccodrilli, NWPOA (Northern Wayne Property Owners Alliance)
Jefferson Township, Lackawanna County resident

Until Pennsylvania's Supreme Court opened the door to local zoning of natural gas development, Pennsylvania law protected private property rights with vigor that was practically unmatched in the nation.

Unfortunately for today's Marcellus lease holders and royalty owners, those rights have been set aside, and an increasing number of local governments -- rallying under the banner of "local control" -- are adopting ordinances that severely curtail landowners' ability to allow the harvest of the minerals they own and benefit from the royalties they'd receive.

On the heels of the Supreme Court decision, we've seen the arrival of troops of self-anointed apostles of local control with draft ordinances they'd have us adopt as written, preferably without debate. They claim that this expansion of "local control" will give zoning boards a greater say in how and where natural gas resources can be developed in the state.

What they don't mention is that Pennsylvania has more than 2,500 separate and distinct municipal governments, and that saddling the natural-gas industry with the decisions of 2,500 governments, most of them made up of part-time elected officials, would not give citizens local control but rather would bring natural-gas development in the commonwealth to a screeching halt.

Also unmentioned is that halting natural-gas development is the real goal of the folks who come to town with their ordinances in hand. These people aren't Pennsylvanians. They're from New York, and they're funded by outfits like the Park Foundation whose goal, they freely admit, is to prevent Marcellus development wherever it's being considered. The public should be up in arms about the misleading rhetoric of this tiny group of professional agitators who set the agenda for so much of the media debate.

At a time when most politicians in Washington can't even agree on what they disagree on, our representatives in Harrisburg are closing in on a bipartisan plan to make Pennsylvania's Marcellus Shale regulations the best in the country. But inches from the goal line, the zoning issue continues to keep this historic bill from final passage.

Those of us who live in the region held hostage by Delaware River Basin Commission know what it feels like to provide for a family in an environment where our rights have been stripped away by a seemingly endless moratorium on gas exploration, and what we've learned from our DRBC experience is to be sure to keep local governments from trying to do the same.

We have some of the nation's strictest state regulations in place already -- with more on the way -- plus assorted federal and local restrictions that control the natural-gas industry in various indirect ways.

Unfortunately, for all the good she continues to do on Marcellus issues and other important matters in our region, our own state senator, Lisa Baker, appears to oppose the reasonable compromise contained in both the House and Senate Marcellus proposals, perhaps unaware that the real aim of those opposing this common-sense compromise isn't to give local residents a say, but to deny those folks their basic rights to private property and what has always been a right in the deeds to our land. Our economic liberties are being taken away; our property seized, in effect, without compensation.

Sen. Baker can be reached at her Dallas office at 570-675-3931. Call her and let her know what the real issue is around here so we can finally get this important bill passed and protect private property by placing modest limits on the ability of local governments to "zone out" drilling. ●

House Passes Marcellus/Utica Shale Impact Bill

Press release 11/17/2011

HARRISBURG— The state House today passed legislation, 107-76, dealing with local and state impacts, environmental concerns and increased regulation of the Marcellus/Utica Shale, House Majority Leader Mike Turzai (R-Allegheny County) said today.

“This is about private sector job growth and protecting our citizens and our environment, pure and simple,” Turzai said. “The natural gas industry is the fastest-growing industry in the Commonwealth. The legislation passed today is a balanced approach to protecting Pennsylvania’s residents and resources and continuing the growth of this job-creating industry.”

House Bill 1950 creates uniformity to specifically help those communities dealing with the drilling; strengthens the laws, regulations and oversight to protect water and the environment; and brings needed, dedicated funding for programs benefitting the state’s environmental resources.

This is local government enabling legislation, allowing communities to enact fees to respond to local impacts as a result of natural gas drilling. The legislation protects residents by prohibiting any impact fee from being passed on to property owners or leaseholders.

The Pennsylvania State Association of Township Supervisors, the County Commissioners Association of Pennsylvania, the Pennsylvania State Association of Boroughs and the Renew Growing Greener Coalition have all stated their support of this bill.

The Marcellus/Utica Shale Impact bill illustrates the House GOP commitment to the job opportunities the Marcellus/Utica Shale represent and illustrates how natural gas exploration and production can be done in a safe and responsible manner. The industry has created tens of thousands of jobs within the Commonwealth and has infused over \$10.5 billion into the state’s economy. That figure climbs to \$20.5 billion when indirect and induced spending is taken into account.

House Bill 1950 would enable counties that host Marcellus Shale drilling sites to impose an impact fee on drillers for up to 10 years via the passage of a local ordinance.

The legislation splits the revenue from the fee, with 75

percent remaining in the county to help mitigate the impact of Marcellus Shale drilling, which includes infrastructure repair, aiding in lowering tax burdens and helping other local government priorities, such as social service assistance. The other 25 percent will go to Commonwealth-wide safety, health and infrastructure concerns.

In addition, the bill includes upgrades to the current regulations on oil and gas drilling.

“House Bill 1950 contains significant changes in setbacks and other environmental safeguards,” said Rep. Garth Everett (R-Lycoming). “The local government restrictions have been substantially modified and this bill contains funding for environmental programs like Growing Greener and the Environmental Stewardship Fund, in addition to requiring a comprehensive study of the cumulative effects on air quality. I am pleased that this bill keeps the majority of the impact fee in local areas such as ours, rather than having it turn into a state general fund money grab.”

Everett said the bill funds environmental programs through the Oil and Gas Lease Fund. He added Pennsylvania had never really anticipated the amount of revenue that would come from state land leases for natural gas drilling when the fund was first created.

House Bill 1950 retains local input on Marcellus Shale drilling operations in local communities. Ordinances relating to oil and gas development that do not conflict with state or federal laws can be enacted, allowing for a reasoned approach to development. In the case of disputes, the attorney general’s office would serve as an arbitrator, rather than going through costly and lengthy court actions.●

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Marcellus Shale Bill First Step Toward A Solution

By: State Representative Rick Saccone 11/28/2011

With the recent passage of House Bill 1950 we are witnessing the same partisan illogic that usually surfaces when one side does not get its way. The most frustrating part of the opposition is that most of their reasoning is superficial and, in some cases, just plain wrong.

The leading shallow argument purports that Pennsylvania is one of the few states without a severance tax, so naturally we should institute one immediately. This argument is spurious in two areas. First, it fails to recognize the total tax structure in the separate states. Texas, which is often used in comparison, imposes a severance tax but has neither personal income tax nor a corporate net income tax (CNI). Pennsylvania has both and, incidentally, boasts the second largest CNI in the nation (9.99 percent).

The second flaw rests in the assumption that drillers pay no taxes. Opponents continuously push this false notion causing citizens to misunderstand the issue.

Last year, the severance tax in Texas yielded \$212 million in revenue. Pennsylvania revenue statistics show that drillers in Pennsylvania paid more than \$200 million in the FIRST QUARTER of this year in CNI tax and sales tax alone. That's four times the rate of those in Texas.

Although rarely reported by the media, drillers have paid more than a billion dollars in taxes since 2006, and more than \$5 billion in royalties to landowners. Often forgotten is the \$15 billion in investment that will take drillers years to recoup.

The second specious argument revolves around the notion of local control. States often delegate aspects of governing to municipalities but reserve the right to retain uniformity in areas as needed. House Bill 1950 is a grand compromise allowing counties to impose a fee if they desire, while ensuring regulation is kept uniform and maintained at the level it can best be enforced, the state.

In addition, most money from the collection of fees will remain locally for distribution by municipalities to cover the impact of the industry. This was agreed to despite concerns by many of us that this money source not turn into a local slush fund which we tried so hard to

continued to page 14

eliminate at the state level. While some individual municipalities object, both the County Commissioners Association and the Township Supervisors Association support the legislation.

Finally, opponents fail to mention all the positive aspects negotiated into the wording to address environmental concerns. Drilling setbacks from streams, water wells, and buildings were all increased. It empowers the Department of Environmental Protection (DEP) to revoke a drilling permit for non compliance with regulations, forces stricter fencing and lighting around drilling operations and requires drillers to post well inspection reports on the Web to increase transparency.

Maybe most importantly it imposes "presumed liability" on drillers within two miles of a well, protecting water supplies by placing the burden on drillers if water contamination is discovered in an area that was not tested for contamination beforehand.

Scores of other positive aspects to the legislation that cannot be listed in this short space, culminate in

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***Marcellus Shale Bill First Step Toward A Solution
continued from page 13***

strengthening Pennsylvania's standards, which are already among the strongest in the nation.

The main point remains that not everything in the bill is supported by all sides. That's what makes it a grand compromise.

In previous years when the Democrats controlled the House and the governor's office they could not reach agreement on this issue. Their inability to govern has crippled our state for nearly a decade.

The Republicans now have control and are actually governing. I remember well constituents telling me what they wanted in Harrisburg were legislators who could stick to their core principles but be willing to compromise on issues that have been at impasse for far too long. This is one of those instances.

Citizens should remember that House Bill 1950 is just a start. We have laid down a benchmark to help advance a future outcome. The Senate passed its own bill and more argument and debate will forge the final product.

Remain wary of partisan pep rallies against this legislation that cleverly present a partial picture designed for political purposes. Stay engaged, and part of the process, as the Legislature irons out the differences from all sides addressing citizen concerns while crafting legislation that will move our economy forward. ●

**State Representative Rick Saccone
39th District, Pennsylvania House of
Representatives**

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Marcellus Shale Coalition President Kathryn Klaber on the Impact Fee:

Coalition President Kathryn Klaber said that the industry added 200,000 new jobs in Pennsylvania in 2011, and expanded shale gas infrastructure across the state. However, she said that she's disappointed that the legislature didn't pass a set of statewide laws to regulate industry practices.

"I think it's in the best interest of all stakeholders to have closure on those bills," said Klaber. "The longer we have uncertainty as an industry, the less we're able to focus on the business at hand."

Klaber said that she's hopeful that next year will bring passage of laws to normalize gas infrastructure zoning laws through all of Pennsylvania's municipalities, many of which have passed their own zoning laws that geographically limit or outright ban Marcellus Shale well pads and other equipment.

2012 begins at a time when natural gas prices are at an all-time low, said Klaber, which is a challenge for the industry, but good news for consumers.

"We expect, in 2012, those low gas prices to result in additional electricity generation using natural gas, hopefully some big, important decisions for various fleet operators, to convert fleets to natural gas," said Klaber.

All in all, the MSC chief said that 2012 is "not a perfectly rosy picture," but she said that she's confident that the industry will continue to grow. ●

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Legislative Update



Baker's Natural Gas Pipeline Safety Bill Signed into Law

Press release 12/22/2011

HARRISBURG – Gov. Tom Corbett today signed into law Rep. Matt Baker's (R-Bradford/Tioga) legislation establishing regulatory oversight of natural gas pipelines in the Commonwealth to the Pennsylvania Public Utility Commission (PUC).

"Currently, Pennsylvania is one of a very few states that produce natural gas that does not give the authority of gas lines to a state entity, and as a result, there is no designated agency to ensure compliance for a number of safety regulations," according to Rep. Tina Pickett (R-Bradford/Sullivan/Susquehanna), a major co-sponsor of the proposal.

"This legislation is just common sense and keeps us in line with what other 31 natural gas-producing states are doing," said Baker. "I am pleased that the General Assembly and governor recognized the immediate need for such legislation and fast-tracked it through the legislative process and signed it into law."

Baker noted that the new law will also give the PUC the power to regulate natural gas pipelines without having to deem them a public utility. Therefore, the power of eminent domain is not extended. The legislation gives the PUC the power to inspect and investigate natural gas pipelines with the Commonwealth in coordination with the U.S. Department of Transportation's (U.S. DOT) Pipeline and Hazardous Material Safety Administration.

"Although we are all concerned with the environmental and economic impacts of natural gas exploration, we also need to be cognizant of the occupational and industrial risks associated with production of this energy source," said Baker. "This new law will make sure that proper oversight takes place for the safety of natural gas workers and the public."

Because an increased amount of inspections will need to be performed, the law also provides for the hiring of

additional safety inspectors. Baker said money to hire the inspectors will come from both federal funding and the gas industry through assessments outlined in the legislation. It is anticipated that at least 12 or more new additional pipeline safety inspection engineers will be hired.

In addition to safety groups like the Pennsylvania Consumer Advocate and the state fire commissioner, the proposal is supported by the PUC, the U.S. DOT, the Pennsylvania Landfill Association, the Pennsylvania Propane Association, the Pennsylvania Independent Oil and Gas Association, and the Associated Petroleum Industries of Pennsylvania.

Act 127 of 2011 will take effect in 60 days. ●

Gas Drilling Safety Bill returns to the Senate

HARRISBURG – The State House of Representatives voted 191-1 to approve legislation to require the use of Global Positioning System (GPS) coordinates on all unconventional oil and gas wells, and mandate drillers to file emergency management plans to enhance public safety.

The legislation, contained in Senate Bill 995, will require companies operating unconventional gas and oil wells to formulate contingency plans in case of emergencies, and to file them with the Department of Environmental Protection, the Pennsylvania Emergency Management Agency and local officials. In addition, GPS coordinates must be set for the site of the well and on roads that lead to it. There is also a mandate that calls for posting information at the site.

After the passage in the House December 15, 2011, the bill returned to the Senate and is awaiting final approval before it can move on the Governor to be signed into law. ●

Some thoughts from the Editor: *Is there going to be an Impact Fee?*

The House passed their version of an impact fee (HB 1950) in a 107-76 vote on November 17, 2011 and sent it over to the Senate for approval. There it was completely overhauled to mirror the Senate's version (SB 1100), with that version passing the Senate 28-22, on December 14, 2011. On being referred back to the house, the revised bill was rejected 0-197, on December 20, 2011.

The Senate passed their version of the impact fee (SB 1100) November 15, 2011 in a 29-20 vote and sent that legislation to the house for approval, where it has not advanced out of committee.

Expect these bills to bounce around in committee with spirited debate before a draft is produced that both chambers can agree on. However it is unfortunate we are in a situation where Pennsylvania is again raising taxes on its few remaining industries, even though it is currently experiencing record-low natural gas pricing. As many counties across Pa move from an exploratory stage to more of a production stage, it does appear the industry has turned its sights from opposition of the inevitable taxation to addressing their operational needs.

One major difference between the two proposed bills is on the allocation front. The Senate favored 55% to be returned locally while the House favored 75% be returned locally. Let's just hope we can keep the impact fee's passage clear of a budget battle. That would limit the pressure put on lawmakers to treat this fee's revenue like all the other "found money" that flows into Harrisburg...

Notably, the impact fee is one of the largest recommendations of the Governor's Marcellus Shale Advisory Commission to be acted on. Expect that once it passes, we see compulsory integration brought up soon after.

There is tremendous political pressure to pass an impact fee, so expect to see it this year. It is important that we are heard as mineral owners from on this issue.

Tell us where you stand: email us pennroar@yahoo.com

Chesapeake, EnerVest deal a new high-water mark for the Utica

November 3, 2011 by Tom Fowler

A \$3.4 billion joint venture of Chesapeake Energy, Houston-based EnerVest and an unnamed foreign company sets the bar higher for the Utica shale formation in Ohio. Under terms of the deal announced Thursday, the unnamed company will take a 25 percent stake in 653,000 acres in 10 Ohio counties. This includes 570,000 acres owned by Chesapeake and 83,000 acres owned by EnerVest, which manages oil and gas properties for institutional investors.

The deal values the assets at about \$15,000 per acre, said John Walker, president and CEO of EnerVest. That's more than the \$8,000-per-acre price tag for a recent Utica shale purchase made by Hess.

The Utica is on a growing list of natural gas-bearing shales that have been the focus of multibillion-dollar bidding wars. Shale formations were long considered uneconomical for oil and gas production because they are dense and don't allow for easy flow of hydrocarbons.

Chesapeake has been expanding its Utica footprint aggressively in recent years. Chesapeake and EnerVest are the No. 1 and No. 2 acreage holders in the Utica.

EnerVest's foothold in Ohio began in 2003 when it purchased Columbus, Ohio-based CGAS out of Enron Corp.'s bankruptcy. The company's wells tapped into conventional oil and gas formations, although EnerVest and other companies were aware of the existence of natural gas in the Utica shale. EnerVest built up its Ohio acreage over the years, with an average acquisition cost of around \$10 per acre, said Walker. "We still haven't made a decision if we'll sell our remaining acreage or not, but if this turns out to be another Eagle Ford — which we think it is — it's best to be patient," Walker said.

Chesapeake said, meanwhile, that it sold \$500 million in preferred stock of a newly formed entity called CHK Utica, LLC to a private equity group called EIG Global Energy Partners. The new entity will be focused on Utica development •

Range Resources Production Hits Record

By Jack Z. Smith jzsmith@star-telegram.com

Fort Worth-based Range Resources, a major operator in the Marcellus Shale natural gas play in Pennsylvania, said today it posted record fourth-quarter production and that 2011 marked its eighth consecutive year of double-digit gains in output.

Range CEO Jeff Ventura said the production increases represent "a terrific accomplishment by our team," given the fact that the company sold the bulk of its Barnett Shale operations in North Texas last spring.

Fourth-quarter production averaged the equivalent of 625 million cubic feet of gas per day, a 16 percent increase over the corresponding period of 2010. The company reached its year-end 2011 Marcellus production target of 400 million cubic feet equivalent per day by early December, roughly doubling its year-end 2010 output in the play.

Range's company-wide production for all of 2011 averaged the equivalent of 554 million cubic feet of gas per day, a 12 percent rise over 2010. Had the Barnett properties not been sold at the end of April, the production growth would have been 36 percent, the company said.

The prices the company realized for its fourth-quarter production averaged the equivalent of \$5.44 per 1,000 cubic feet of gas, Range said.

Production and averaged realized prices for each commodity were: natural gas, 491 million cubic feet per day, \$4.14 per 1,000 cubic feet; natural gas liquids (such as propane and butane), 16,931 barrels per day, and \$54.31 per barrel; and crude oil, 5,409 barrels per day, and \$83.71 per barrel.

Range said it has about 75 percent of its expected natural gas production for 2012 hedged at a weighted average floor price of \$4.45 per million British thermal units. Range also said it has about 240 million BTUs per day of 2013 gas production hedged at a floor price of \$4.73.

As a result, "we are well-positioned to continue to generate attractive returns during this period of low natural gas prices," Ventura said. Gas recently has sold at a depressed level of only about \$2.50 to \$2.60 in contracts for February delivery in futures trading in New York. •

DEP Accepts Public Comment on Oil and Gas Erosion Control Permit

HARRISBURG -- The Department of Environmental Protection announced today it has submitted a revised version of its erosion and sediment control general permit for earth disturbance associated with oil and gas activities for publication in the Pennsylvania Bulletin, along with four other supporting documents, including a draft permit application and a policy explaining the permit requirements.

DEP will accept comments on the documents from Jan. 21 to March 21, 2012.

To view the permit and related documents, visit www.dep.state.pa.us and click on "Oil and Gas."

Written comments may be submitted on the draft technical guidance document for 60 days after publication in the Pennsylvania Bulletin. DEP will accept comments submitted by email; no comments submitted by facsimile will be accepted. A return name and address must be included in each email transmission.

Written comments should be submitted to Joseph Adams, DEP Office of Oil and Gas Management, P.O. Box 8765, Harrisburg, PA 17105-8765 or by email to josepadams@pa.gov.



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